

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERIS KENYA GATLIN,
Plaintiff,

v.

BANK OF AMERICA, et al.,
Defendants.

No. 2: 23-cv-0272 DAD KJN P

ORDER

Plaintiff is a county prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the

1 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
5 court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
10 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
14 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
15 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
16 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
17 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
19 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
22 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
23 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
24 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.
25 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the
26 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v.
27 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal
28 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as

1 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
2 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
3 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

4 Named as defendants are Bank of America, Wells Fargo, Union Bank, Washington
5 Mutual, Charles Schwab, Capital One, Golden 1, Ameritrade, Citibank, Safe Credit Union,
6 Sacramento Credit Union, the Chief Executive Officers of the financial institution defendants and
7 the Sacramento County Jail.

8 In claim one, plaintiff alleges that he was denied access to his bank accounts and trust
9 accounts in violation of the Sixth and Fourteenth Amendments.

10 In order to state a claim under Section 1983, a plaintiff must allege that: (1) defendant
11 was acting under color of state law at the time the complained of act was committed; and (2)
12 defendant's conduct deprived plaintiff of rights, privileges or immunities secured by the
13 Constitution or laws of the United States. 42 U.S.C. § 1983; see West v. Atkins, 487 U.S. 42, 48
14 (1988). The defendant financial institutions and their defendant Chief Executive Officers are not
15 state actors. Accordingly, plaintiff's claims against these defendants are dismissed.

16 Turning to plaintiff's claim against defendant Sacramento County Jail, an agency or
17 department of a municipal entity is not a proper defendant under Section 1983. Vance v. Cnty. of
18 Santa Clara, 928 F.Supp. 993, 996 (N.D. Cal. 1996). Rather, the county itself is the proper
19 defendant. Id. Accordingly, plaintiff's claims against defendant Sacramento County Jail are
20 dismissed with leave to file an amended complaint naming Sacramento County as a defendant.

21 In addition, "[a] municipality cannot be held liable solely because it employs a tortfeasor-
22 or, in other words, a municipality cannot be held liable under § 1983 on a respondeat superior
23 theory." Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691(1978). Municipal liability under
24 Monell may be established in any of three ways: (1) "the plaintiff may prove that a city employee
25 committed the alleged constitutional violation pursuant to a formal governmental policy or a
26 longstanding practice or custom which constitutes the standard operating procedure of the local
27 governmental entity;" (2) "the plaintiff may establish that the individual who committed the
28 constitutional tort was an official with final policy-making authority and that the challenged

1 action itself thus constituted an act of official governmental policy;” or (3) “the plaintiff may
2 prove that an official with final policy-making authority ratified a subordinate’s unconstitutional
3 decision or action and the basis for it.” Gillette v. Delmore, 979 F.2d 1342, 1346–47 (9th Cir.
4 1992).

5 If plaintiff files an amended complaint naming Sacramento County as a defendant, he
6 shall address how defendant Sacramento County violated his constitutional rights based on the
7 legal standard set forth above. Plaintiff’s claim in his complaint that he was denied access to his
8 bank and trust accounts does not demonstrate municipal liability based on the legal standards set
9 forth above.

10 In claim two, plaintiff alleges violations of his Fifth, Sixth and Fourteenth Amendment
11 rights on the grounds that Sacramento County is not mailing his mail. Prisoners have a First
12 Amendment right to send and receive mail. Witherow v. Paff, 52 F.3d 264, 265 (9th Cir. 1995).
13 However, a prison may adopt regulations which impinge on an inmate’s constitutional rights if
14 those regulations are ‘reasonably related to legitimate penological interests.’” Id., quoting Turner
15 v. Safley, 482 U.S. 78, 79 (1987).

16 For the following reasons, the undersigned finds that plaintiff has not pled sufficient facts
17 to state a potentially colorable claim for violation of his First Amendment right to send mail.
18 First, plaintiff does not name Sacramento County as a defendant. Second, assuming plaintiff
19 named Sacramento County as a defendant, plaintiff does not allege sufficient facts demonstrating
20 municipal liability. For example, plaintiff does not allege that he was unable to send mail
21 pursuant to a Sacramento County policy. Plaintiff also does not describe the mail he was unable
22 to send or why he was unable to send the mail. For these reasons, plaintiff’s claim alleging that
23 he was denied his First Amendment right to send mail is dismissed with leave to amend.

24 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
25 about which he complains resulted in a deprivation of plaintiff’s constitutional rights. See, e.g.,
26 West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how
27 each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no
28 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a

1 defendant's actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633
2 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official
3 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,
4 268 (9th Cir. 1982).

5 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
6 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
7 complaint be complete in itself without reference to any prior pleading. This requirement exists
8 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez
9 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint
10 supersedes the original, the latter being treated thereafter as non-existent.'" (internal citation
11 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any
12 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
13 and the involvement of each defendant must be sufficiently alleged.

14 In accordance with the above, IT IS HEREBY ORDERED that:

15 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

16 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
17 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
18 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
19 Sacramento County Sheriff filed concurrently herewith.

20 3. Plaintiff's complaint is dismissed.

21 4. Within thirty days from the date of this order, plaintiff shall complete the attached
22 Notice of Amendment and submit the following documents to the court:

23 a. The completed Notice of Amendment; and

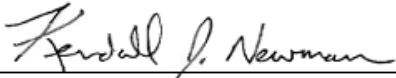
24 b. An original of the Amended Complaint.

25 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
26 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
27 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

28 ///

1 Failure to file an amended complaint in accordance with this order may result in the
2 dismissal of this action.

3 Dated: March 15, 2023

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5 KENDALL J. NEWMAN
6 UNITED STATES MAGISTRATE JUDGE

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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JERIS KENYA GATLIN,
11 Plaintiff,
12
13 v.
14 BANK OF AMERICA, et al.,
15 Defendants.

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NOTICE OF AMENDMENT

16 Plaintiff hereby submits the following document in compliance with the court's order
17 filed _____.

18 _____ Amended Complaint
19 DATED:

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21 _____
22 Plaintiff
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